IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

AND

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) No.1167 of 2007

Commissioner of Income Tax
Chennai. ... Appellant/Respondent

Vs.

M/s.Secit Spa Societa Ecologica
Ilaliana India Project Office
"Swathi Sahana", Flat NO.B1,
Ground Floor, New NO.6, Old No.55
Bharathi Dasan Road, Alwarpet
Chennai - 600 018. ... Respondent./Appellant

Tax Case Appeal filed under Section 260-A of the Income-tax Act, 1961 against the order of the Income-tax Appellate Tribunal, 'C' Bench, Chennai dated 23.3.2007 and made in I.T.A.No.2931/Mds/2004.(ITA No.29/2004-05/A-XI/dated 13.9.04 on the file of the Commissioner of Tax (Appeals)-XI, Chennai against the order in PAN /GIR No.17-S dated 31.3.04 on the file of the Assistant Directer of Income Tax (International Taxation) chennai.)

For Appellant : Mr.J.Nareshkumar

JUDGMENT

(Judgment of the Court was made by K.RAVIRAJA PANDIAN,J.)

The assessment year is 2001-2002. The appeal is filed by the revenue against the order of the Appellate Tribunal dated 23.3.2007 made in I.T.A.NO.2931/Madras/04 by the Income-tax Appellate Tribunal, Madras.

2. The facts as culled out from the statement of facts stated by the revenue are as follows:

The assessee is a non-resident Company carrying on business of construction, erection and commissioning of liquid waste treatment plants and following the completed contract method of accounting. The assessee filed its return for the assessment year 2001-2002 declaring a loss of Rs.94,47,870/- and claimed a sum of Rs.1,05,91,411/- towards provision for expenditure. The assessing officer disallowed the provision for expenditure on the ground that the amount claimed by the assessee was

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based on estimates by the Management in proportion to the stage of completion. The accounting standard AS-7 does not permit any negative work in progress to be allowed, but the claim made by the assessee was as negative work in progress and the assessee was following completed contract method of accounting. Aggrieved by the order so passed by the assessing officer, the assessee filed an appeal before the Commissioner of Income-tax (Appeals), who confirmed the order of the assessing officer. A further appeal came to be filed at the instance of the assessee before the Income-tax Appellate Tribunal and the Tribunal remanded the issue back to the assessing officer to determine the stage to which the project was completed during the relevant year and allow expenditure accordingly on the ground that as per clause 21 of the Accounting Standard 7, expenditure can be allowed depending on the stage to which the contract work was completed. The revenue aggrieved by the order of the Tribunal filed the present appeal before this Court by formulating the question of law as follows:

> "Whether on the facts and circumstances of the case, the Tribunal was right in holding that provision for expected loss can be allowed as a deduction prior to completion of the contract, while the assessee was following a completed contract method of recognition of income?

3. Learned counsel appearing for the revenue submitted that the provision for foreseeable losses is not allowable under the Income-tax Act. Further, in the assessee's case, it was not a situation that the outcome of the contract being able to be estimated reliably.

4. We heard the argument of the learned counsel for the revenue and perused the materials on record.

5. As seen from the order of the Appellate tribunal, as per Clause 21 of the Accounting Standard 7, expenditure could be allowed depending on the stage to which contract work was completed. The authorities below have rightly rejected the claim of the assessee on the estimated loss. The Tribunal had only remanded the claim to the assessing officer with a direction to determine the stage to which project was completed during the relevant year and allow the expenditure accordingly, which is permissible as per clause 21 of the Accounting Standard 7. Hence, we do not find any merit in the case of the revenue, much less a question of law is involved in this appeal for entertainment of the same and the appeal is therefore dismissed.

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Asst.Registrar

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Sub Asst.Registrar

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To

1. The Asst.Registrar,
   Income-tax Appellate Tribunal
   Chennai.

2. The Commissioner of
   Income-tax,(Appeals) - XI
   Chennai - 34.

3. The Assistant Director of
   Income-tax (International
   Taxation), Chennai

+ 1 cc to Mrs.Pushya Sitaraman Advocate SR.NO.54443

KK(CO)
RD 14.9.07

Tax Case (Appeal)
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